

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

**CIVIL REVISION PETITION No.1313 of 2021**

**ORDER:**

The present Civil Revision Petition is filed aggrieved by the orders dated 25.11.2021 passed in I.A.No.346 of 2021 in O.S.No.235 of 2019 on the file of the Court of Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Ramachandrapuram, East Godavari District.

2. The material facts relevant for the purpose of the present Revision Petition may briefly be stated thus:

3. The petitioner herein is defendant in O.S.No.235 of 2019 referred to above. The respondent/plaintiff filed the suit for recovery of amount against the petitioner herein on the strength of a registered mortgage deed. The suit was posted for appearance of the petitioner on 14.10.2019 and due to her non-appearance, she was set *ex parte*. Thereafter, on 07.11.2019 a Preliminary Decree was passed against the petitioner/defendant and in the said circumstances, the petitioner/defendant herein filed I.A.No.346 of 2021 under Section 5 of the Limitation Act to condone the delay of 589 days in filing the application under Order IX, Rule 13 of CPC to set aside the *ex parte* decree dated 07.11.2019. The said application was opposed by the respondent/plaintiff by filing a counter. The learned Trial Court after considering the matter, by an order dated 25.11.2021 dismissed the said application. Hence, the present Civil Revision Petition.

4. Heard Mr.Rama Murthy P.V.S.A, learned counsel representing the petitioner. Despite service of notice, none entered appearance on behalf of the respondent/plaintiff.

5. The learned counsel for the petitioner, *inter alia*, submits that the order of the Trial Court in dismissing the application seeking to condone the delay in filing the application to set aside the *ex parte* decree is not just or tenable. He submits that the petitioner has assigned plausible reasons in the application seeking to condone the delay, in filing the application to set aside *ex parte* decree and the learned Trial Court instead of condoning the delay, went wrong in dismissing the same. He submits that the learned Trial Court should have adopted a pragmatic approach, rather than a pedantic one. He submits that the suit is based on a deed of mortgage alleged to have been executed by the petitioner and therefore an opportunity should have been afforded to enable the petitioner to contest the matter. The learned counsel further submits that, even assuming that the petitioner is not vigilant the learned Trial Court should have condoned the delay by imposing costs. Making the said submissions, the learned counsel seeks to set aside the order under revision.

6. The submissions made by the learned counsel for the petitioner are considered. As noted above, none entered appearance on behalf of the respondent/plaintiff. Be that as it may.

7. The petitioner in the application seeking to condone the delay in filing application under Order IX, Rule 13 of the Civil Procedure Code has set out the circumstances under which she could not approach the Court at the appropriate time and the reasons for the delay. Though, there appears to be some lapses on the part of the petitioner, she sought to explain the same, *inter alia*, stating that she was attending to coolie work, residing in Hyderabad and as such has not received the summons issued by the Hon'ble Court, personally. She also submits that she sustained ill-health due to Covid-19 and therefore, could not file the application to

set aside the *ex parte* decree through her counsel immediately. Under the said circumstances, this Court is of the considered view that the learned Trial Court ought to have condoned the delay, as the petitioner has shown sufficient cause, at least by imposing costs instead of dismissing the application. The learned Trial Court ought to have appreciated that by giving an opportunity, substantive rights of the parties could be adjudicated effectively. The view of this Court is fortified by various legal precedents.

8. The Hon'ble Supreme Court in **Ram Nath Sao v. Gobardha Sao (AIR 2002 SC 1201)**, *inter alia*, held that when the appellants were rustic and illiterate villagers, the expression "Sufficient Cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafides is imputable to a party.

9. In **Mithailal Dalsanagar Sigh v. Annabai Devaram Kini (AIR 2003 SC 4244)**, the Hon'ble Supreme Court in categorical terms observed that the Courts have to adopt "a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a '*lis*' determined on merits, unless, he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitle himself from seeking the indulgence of the Court."

10. In **N.Balakrishnan v. M.Krishna Murthy (1998 (7) SCC 123)** the Hon'ble Supreme Court opined that in matters pertaining to condonation of delay, the word 'sufficient cause' should be construed liberally. The Hon'ble Court, *inter alia* held that 'Condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a

certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor". The Hon'ble Supreme Court also observed that while condoning the delay, the Court should also keep in mind the consequent litigation expenses to be incurred by opposite party and should compensate him accordingly.

11. A conspectus of the relevant Case Law in the context of condonation of delay would go to show that the word 'sufficient cause' should receive a liberal construction to meet the ends of justice and the approach should be pragmatic, however with a caveat that the delay due to a deliberate act, malafide intention deserves no indulgence.

12. In the light of the above settled legal principles, this Court is inclined to set aside the order under Revision in exercise of powers under Article 227 of the Constitution of India, however by imposing costs. Accordingly, the order dated 25.11.2021 is set aside and the I.A.No.346 of 2021 is allowed by condoning the delay of 589 days in filing the application to set aside the *ex parte* Preliminary Decree dated 07.11.2019, subject to the condition of petitioner/defendant paying a sum of Rs.10,000/- towards costs to the respondent/plaintiff, within a period of four (04) weeks. Further, the petitioner/defendant shall co-operate with the trial of the suit.

13. The Civil Revision Petition is, accordingly allowed. No order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand disposed of.

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**NINALA JAYASURYA, J**

Date: 04.03.2022

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